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## DA 96-2187

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Dickson and Kingston Springs,  
Tennessee)

MM Docket No. 96-265  
RM-8913

**Adopted: December 27, 1996**

**Released: January 10, 1997**

Comment Date: March 3, 1997

Reply Comment Date: March 18, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Tuned In Broadcasting, Inc. ("petitioner"), licensee of Station WYYB(FM), Channel 229A, Dickson, Tennessee, requesting the reallocation of Channel 229A<sup>1</sup> from Dickson to Kingston Springs, Tennessee, and the modification of Station WYYB(FM)'s license to specify Kingston Springs as its community of license. Petitioner states it will apply for Channel 229A, if reallocated to Kingston Springs.

2. Petitioner filed its request pursuant to Section 1.420(i) of the Commission's Rules. This provision permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870, 4874 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O"). In support of its proposal, petitioner states that Kingston Springs is an incorporated community with a 1990 U.S. Census population of 1,529 persons. It further notes that Kingston Springs is governed by an elected mayor and four council members and is the only city within Cheatham County that employs a

<sup>1</sup> We note that Station WYYB(FM), by letter dated December 3, 1996, has requested dismissal of its one-step application that requested a co-channel upgrade from Channel 229A to Channel 229C3 at Dickson, Tennessee.

full-time City Manager to oversee the city's operations. Petitioner submits that the community provides its residents with public health and safety services through the offices of Public Safety Director, Public Works Director, City Attorney, City Recorder, City Judge, Fire Chief and Parks Commissioner. Petitioner states that the reallocation of Channel 229A to Kingston Springs is in the public interest as it would provide a first local FM service to the Kingston Springs and will not deprive Dickson of its sole local aural transmission service.<sup>2</sup> Moreover, petitioner claims that adoption of its proposal will result in an increase of service to 388,220 persons within WYYB(FM)'s 60 dBu contour.

3. We believe petitioner's proposal warrants consideration since it would not deprive Dickson of its only local aural transmission service, and would provide Kingston Springs with its first local transmission service. However, since petitioner proposes to relocate Station WYYB(FM)'s transmitter site, we request that it provide information showing the areas and populations which will receive new service and the areas and populations which will lose existing service if Channel 229A is reallocated to Kingston Springs. The study should also indicate the number of reception services which are now available within the gain and loss areas.

4. Channel 229A can be allotted to Kingston Springs consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules with a site restriction of 11.9 kilometers (7.4 miles) east imposed to accommodate petitioner's desired site.<sup>3</sup> As the petitioner's modification request at Kingston Springs is consistent with the provisions of Section 1.420(I) of the Commission's Rules, we shall propose to modify Station WYYB(FM) as requested without entertaining competing expressions of interest in the use of Channel 229A at Kingston Springs, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Dickson, Tennessee	229A, 273C1	273C1

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<sup>2</sup> Stations WQZQ(FM) and WDKN(AM) are also licensed to Dickson..

<sup>3</sup> The coordinates for Channel 229A at Kingston Springs are North Latitude 36-07-13 and West Longitude 86-59-03.

Kingston-Springs, Tennessee

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229A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before March 3, 1997, and reply comments on or before March 18, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

David D. Oxenford  
Lauren Lynch Flick  
Fisher, Wayland, Cooper, Leader,  
& Zaragoza, L.L.P.  
2001 Pennsylvania Avenue, NW  
Suite 400  
Washington, D.C. 20006  
(Counsel for petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte

presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.